IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 533

TORAO TAKAHASHI, *Petitioner*,

v.

FISH AND GAME COMMISSION, LEE F. PAYNE, *as Chairman thereof*, W. B. WILLIAMS, HARVEY E. HASTAIN, and WILLIAM SILVA, *as members thereof*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF CONGRESS OF INDUSTRIAL ORGANIZATIONS *AMICUS CURIAE*

LEE PRESSMAN,
General Counsel,

FRANK DONNER,
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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT:

This brief is filed, pursuant to the consent of all parties, in accordance with Rule 27 (9) of this Court.

INTEREST OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

The issues raised by the instant case are of the most profound significance to *amicus curiae*. Article II of the Constitution of the Congress of Industrial Organizations states that the objects of the organization are:

> "First. To bring about the effective organization of the working men and women of America *regardless of race, creed, color, or nationality,* and to unite them for common action into labor unions for their mutual aid and protection."

The Constitutions of its various constituent labor organizations likewise contain statements of fundamental policy against race discrimination and dedicate those organizations to the elimination of racial discrimination.

Since its formation in 1935, the Congress of Industrial Organizations has condemned the evil of racial discrimination and has actively instituted educational and legislative programs to end that evil. In 1942, by action of the Executive Board of the Congress of Industrial Organizations, a Committee on Racial Discrimination was established charged with the responsibility of preparing programs for the elimination of racial discrimination.

Subsequent to the formation of the CIO Committee on Racial Discrimination, the Congress of Industrial Organizations adopted a resolution in convention restating its opposition to all forms of racial discrimination.

> "WHEREAS, Discrimination against workers because of race, religion or country of origin is an evil characteristic of our fascist enemies, we of the democracies are fighting fascism at home and abroad by welding all races, all religions and all peoples into a united body of warriors for democracy. Any discriminatory practices within our own ranks, against Negroes or other groups, directly aids the enemy by creating division, dissension and confusion. Any discriminatory practices in employment policies hampers production by depriving the nation of the use of available skills and manpower; therefore be it
>
> "RESOLVED, That the CIO reiterates its firm opposition to any form of racial or religious discrimination and renews its pledge to carry on the fight for protection in law and in fact of the rights of every racial and religious group to participate fully in our social, political and industrial life."

Amicus curiae herein has a direct interest in the problem presented by this case. Many of its members are persons of Japanese birth who came to this country, as did so many millions of other immigrants, to seek the fulfillment of their

dreams of opportunity and equality. The statute in question presents a serious bar to the fulfillment of those dreams. Denied the right, through no fault or wrongdoing of their own, of becoming citizens, petitioner and other resident alien Japanese fishermen have been prevented from exercising the very basic right of earning a living in the field for which they are best qualified.

ARGUMENT

I.

SECTION 990 OF THE CALIFORNIA FISH AND GAME CODE[1] DENIES TO PETITIONER THE EQUAL PROTECTION OF THE LAWS CONTRARY TO THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A mere glance at the legislative history of the statute should be enough to convince this Court, as it did the trial court (R. 17) that the statute was aimed exclusively against aliens of Japanese ancestry.

Prior to 1942 the persons who could obtain commercial fishing licenses in California were described in the section as follows:

"A commercial fishing license may be issued only to a person who has continuously resided within the United States for a period of one year immediately prior to the time he makes application for such license. A commercial fishing license may be issued to a corporation only if said corporation is au-

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[1] "Every person who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take fish, mollusks or crustaceans for profit, or who brings or causes fish, mollusks or crustaceans to be brought ashore at any point in the State for the purpose of selling the same in a fresh state, shall procure a commercial fishing license.

"A commercial fishing license may be issued to any person other than a person ineligible to citizenship. A commercial fishing license may be issued to a corporation only if said corporation is authorized to do business in this State, if none of the officers or directors thereof are persons ineligible to citizenship, and if less than the majority of each class of stockholders thereof are persons ineligible to citizenship." (Enacted 1933; amended by later Act passed at same session, Stat. 1933, ch. 696, p. 1784; amended by Stat. 1943, ch. 1100, §3, p. 3040; amended by Stat. 1945, ch. 181, §3.)

thorized to do business in this State." (Enacted by Stats. 1933, p. 479; Amended by later act passed at same session, Stats. 1933, p. 1784.)

In 1942 the Japanese, including petitioner, were evacuated from California. (R. 11.)

In 1943, Section 990 of the Fish and Game Code was amended by Cal. Stats. 1943, ch. 1100, § 3, p. 3040, to read as follows:

"A commercial fishing license may be issued to any person other than an alien Japanese. A commercial fishing license may be issued to a corporation only if said corporation is authorized to do business in this State, if none of the officers or directors thereof are alien Japanese, and if less than the majority of each class of stockholders thereof are alien Japanese."

Thus prior to the evacuation, *any* person, so long as he had resided in the United States for one year immediately prior to making application, and *any* corporation authorized to do business in California was eligible to secure a license. Thus, petitioner had fished for his livelihood and had been granted licenses so to do since 1915 (R. 11). Following abruptly on the heels of the evacuation, the section was changed so that all persons *except* alien Japanese, regardless of how long they had resided in the United States, were eligible to secure licenses. And further, all corporations authorized to do business in the state, *except* those who had no alien Japanese officers or directors or those 50 percent or more of whose stock was owned by alien Japanese, were eligible to secure licenses. All this, regardless of how long such alien Japanese had lived in this country or how loyal they were to its principles.

Clearly the statute as amended in 1943 was unconstitutional. *Yick Wo v. Hopkins*, 118 U. S. 356.

Recognizing this infirmity, an official committee of the California Senate appointed by Senate Resolution No. 122, Session of 1943, "to investigate the questions of Japanese resettlement involving the relocation of Japanese internees and evacuees" reported to the Senate as follows:

"The committee, however, feels that there is danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese. It is believed that this legal question can probably be eliminated by an amendment which has been proposed to the bill which would make it apply to any alien who is ineligible to citizenship.

"The committee has introduced Senate Bill 413 to make this change in the statute." [1]

Senate Bill 413 later became law by Stats. 1945, ch. 181, § 3, so that the section reads as it does today.

It is thus crystal clear that the only purpose of the 1945 amendment was to eliminate the question of the unconstitutionality of the previous wording. The Senate Fact-Finding Committee was to deal with problems relative to the *Japanese*. It had no concern with, nor did it concern itself with, problems of fishing nor of any other aliens ineligible to citizenship. Its investigation was directed at the Japanese and its recommendations and the bill it introduced were directed at the Japanese.

In the light of the above history, the substitution of the term, "person ineligible to citizenship" for "alien Japanese" is not the kind of "legal litmus paper" [2] that can blind this Court to the true racist purpose of the statute. *Yu Cong Eng v. Trinidad*, 271 U. S. 500.

Respectfully submitted,

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[1] Pg. 5, Report of the Senate Fact-Finding Committee on Japanese Resettlement, Calif. State Printing Office, 1945. This report has previously been lodged with the Clerk of this Court in *Oyama v. California*, No. 44, October Term 1947.

[2] Justice Holmes in *Abrams v. United States*, 250 U. S. 616, 629.